

proposed rulemaking (NPRM) entitled, "Drawbridge Operation Regulation; New Haven Harbor, Quinnipiac and Mill Rivers, CT," in the **Federal Register** (75 FR 1738) on January 13, 2010. The comment period for the NPRM closed on February 12, 2010. We received no comments in response to our NPRM. No public meeting was requested, and none was held.

The promulgation of the final rule was delayed due to the construction of the I-95 Pearl Harbor Memorial Bridge across the Quinnipiac River, at New Haven, Connecticut, which required land traffic detours during the initial phase of the new bridge construction. The Coast Guard delayed publication of the final rule to help facilitate vehicular traffic detours.

Because several years have passed since we first solicited comments on this rulemaking we are reopening this NPRM to provide notice and opportunity for the public to comment on this rulemaking before making the proposed changes permanent.

The notice of proposed rulemaking, requested by the City of New Haven, pertains to the following bridges:

- The Ferry Street Bridge at mile 0.7, across the Quinnipiac River, which has a vertical clearance in the closed position of 25 feet at mean high water and 31 feet at mean low water.
- The Grand Avenue Bridge at mile 1.3, across the Quinnipiac River, which has a vertical clearance in the closed position of 9 feet at mean high water and 15 feet at mean low water.
- The Chapel Street Bridge at mile 0.4, across the Mill River, which has a vertical clearance of 7 feet at mean high water and 13 feet at mean low water. The regulation governing the Tomlinson Bridge at mile 0.0, across the Quinnipiac River, will not be changed by this rulemaking.

The existing drawbridge operation regulations listed at 33 CFR 117.213, authorizes a roving crew concept that requires the draw of the Ferry Street Bridge to open on signal from October 1 through April 30, between 9 p.m. and 5 a.m., unless the draw tender is at the Grand Ave or Chapel Street bridges, in which case a delay of up to one hour in opening is permitted.

The bridge owner would like to extend the above roving crew concept to be in effect year round.

The waterway users are seasonal recreational craft, commercial fishing and construction vessels.

As noted, because of the passage of time since the notice of proposed rulemaking was published, the Coast Guard is reopening the comment period until January 15, 2013.

This notice is issued under authority of 33 U.S.C. 499 and 5 U.S.C. 552.

Dated: December 10, 2012.

**Daniel B. Abel,**

*Rear Admiral, Commander, First Coast Guard District.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900-AO34**

#### **VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its VA Health Professional Scholarship Program (HPSP) regulations. VA also proposes to establish regulations for a new program, the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP). These proposed regulations would comply with and implement sections 302 and 603 of the Caregivers and Veterans Omnibus Health Services Act of 2010 (the 2010 Act). Section 302 of the 2010 Act established the VIOMPSP, which authorizes VA to provide financial assistance to certain students seeking a degree in visual impairment or orientation or mobility, in order to increase the supply of qualified blind rehabilitation specialists for VA and the United States. Section 603 of the 2010 Act reauthorized and modified HPSP, a program that provides scholarships for education or training in certain healthcare occupations.

**DATES:** Comments must be received by VA on or before February 25, 2013.

**ADDRESSES:** Written comments may be submitted: By mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; by fax to (202) 273-9026; or through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to "RIN 2900-AO34-VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the

hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition during the comment period, comments may be viewed online through the Federal Docket Management System at <http://www.Regulations.gov>.

#### **FOR FURTHER INFORMATION CONTACT:**

Nicole Nedd, Healthcare Talent Management Office, Department of Veterans Affairs, 1250 Poydras Street, Suite 1000, New Orleans, LA 70113; (504) 565-4900. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Pursuant to 38 U.S.C. 7601 through 7619, 7633, 7634, and 7636, VA has promulgated regulations implementing the HPSP, codified at 38 CFR 17.600 through 17.612. As explained in current § 17.600, the purpose of this program is to award scholarships "to students receiving education or training in a direct or indirect health-care services discipline to assist in providing an adequate supply of such personnel for VA and for the Nation." This rulemaking proposes to amend the HPSP regulations in response to section 603 of the 2010 Act, Public Law 111-163, which amended the statutory authority for this program.

Section 603(a) and (c) renumbered and amended 38 U.S.C. 7618 as section 7619 and added a new section 7618. Section 7619, as amended, establishes a new delimiting date of December 31, 2014, for the HPSP. The previous delimiting date for HPSP had been December 31, 1998, and, therefore, the program is no longer active. Although this new delimiting date does not by itself require revision to any of the regulations that were in place when the program was previously active, section 603(b) of the 2010 Act amended the eligibility requirements for the HPSP, codified in 38 U.S.C. 7612(b)(2), to allow a broader spectrum of candidates to qualify for the HPSP. Section 7618(a) of title 38, United States Code, as added by section 603(c) of the 2010 Act, requires VA to modify the HPSP so that it will be "designed to fully employ Scholarship Program graduates as soon as possible, if not immediately, upon graduation and completion of necessary certifications, and to actively assist and monitor graduates to ensure certifications are obtained in a minimal amount of time." Paragraph (b) of 38 U.S.C. 7618 requires participants of the HPSP to "perform clinical tours in assignments or locations determined by [VA] while the participants are enrolled in the course of education or training for

which the scholarship is provided.” Finally, section 7618(c) requires VA to ensure that the graduates of the HPSP are assigned a mentor who is employed at the facility where the graduates will perform their obligated service. This rulemaking proposes regulatory revisions to implement these changes in statutory authority, and to make other programmatic changes that will clarify VA policy and how VA implements HPSP.

This rulemaking also proposes new regulations to implement section 302 of the 2010 Act. Section 302 of the 2010 Act established chapter 75 of 38 U.S.C., which requires VA to create a scholarship program similar to the HPSP called the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP). The purpose of the new program “is to increase the supply of qualified blind rehabilitation specialists for [VA] and the Nation.” 38 U.S.C. 7501(b). The statutory authority is substantively similar (and in many ways identical) to the existing authority governing the HPSP. The statutory similarities between the programs include certain defined terms, as well as certain provisions concerning failure to meet the obligations of the HPSP or the VIOMPSP.

We propose that VA policies and regulations related to the two programs will be as similar as possible. To the maximum extent possible, we propose to utilize, amending as necessary, the existing regulations to govern the commonalities between both programs, and then to add additional regulations necessary to implement the new VIOMPSP. This will eliminate redundancies between the two programs, facilitate the administration of the program by VA, and make it easier for the public to understand the details of both programs. For example, VA and non-VA education professionals who seek or promote the use of government scholarships will be required to understand a smaller set of regulations than they would if we administered the two programs through entirely separate regulatory frameworks. In addition, promoting consistency will further the clear legislative intent that the programs be administered in a similar manner, as evidenced by the similarities between the authorizing statutes. We will discuss each proposed rule, seriatim, beginning with the amendments to the existing regulations governing the HPSP.

As noted above, the HPSP is governed by current §§ 17.600 through 17.612. All sections not specifically discussed below would not be amended by this

proposed rule. We also propose to establish new §§ 17.625 through 17.636 to implement the new VIOMPSP.

### **Proposed VA Health Professional Scholarship Program Regulations**

#### *17.600 Purpose*

Current § 17.600 sets forth the purpose of the regulations governing the HPSP, and states that it is designed to provide scholarships for education or training in “[d]isciplines [that] include nursing, physical therapy, occupational therapy, and other specified direct or indirect health-care disciplines if needed by VA.” 38 CFR 17.600. We propose to remove this list of disciplines from § 17.600 and refer in proposed § 17.603(b) to a list of disciplines in 38 U.S.C. 7401(1) and (3), where the list will be expanded to include additional disciplines required by changes in law. We believe that § 17.600 should be a general regulation, and the specific disciplines eligible for consideration for the HPSP should be listed in the regulation governing eligibility. We would, therefore, state in proposed § 17.600 that the individual must pursue “a course of study leading to a degree in certain healthcare occupations [ ] listed in 38 U.S.C. 7401(1) and (3).”

We also propose to add a new second sentence to § 17.600 that would clarify the intent of the HPSP. Section 7601(b) of title 38, United States Code, states that “[t]he purpose of [HPSP] is to assist in providing an adequate supply of trained health-care personnel for the Department [of Veterans Affairs] and the Nation.” The proposed second sentence of 38 CFR 17.600 would state that “[t]he HPSP allows VA to provide scholarship awards to facilitate recruitment and retention of employees in several hard-to-fill healthcare occupations.”

#### *17.601 Definitions*

Current § 17.601 contains definitions applicable “[f]or the purpose of these regulations,” and organizes the definitions in numbered paragraphs. Consistent with more modern organizational frameworks, we propose to list the definitions alphabetically. Except as described in this supplementary information, we do not propose any substantive changes to the existing definitions; this is simply a reorganization. Any term not specifically discussed in the Supplementary Information section of this rulemaking would contain the definition found in current § 17.601.

We propose to change the introductory paragraph to § 17.601 to indicate that the definitions would

apply to §§ 17.600 through 17.636, because, as noted above, the HPSP and the VIOMPSP will be administered in a similar manner. Rather than repeat all the common definitions in the VIOMPSP regulations, which would be governed by §§ 17.625 through 17.636, proposed later in this rulemaking, we have chosen to make the definitions in § 17.601 applicable to both programs, except where noted.

Section 17.601(a) currently defines “acceptable level of academic standing.” We would define “acceptable level of academic standing” to mean “the level at which a participant may continue to attend school under the standards and practices of the school at which a participant is enrolled in a course of study for which an HPSP or VIOMPSP scholarship was awarded.” The revised definition would be consistent with the current definition and would be applicable for both the HPSP and the VIOMPSP.

We propose to delete current paragraph (b), which defines “Act,” because this term is not used in the current or proposed HPSP regulations and would not be used in the proposed VIOMPSP regulations.

We propose to define the term “acceptance agreement” as a signed legal document between VA and a participant of the HPSP or VIOMPSP. Such agreement would specify the obligations of VA and the participant, which must be consistent with §§ 17.600 through 17.612 for the HPSP or §§ 17.626 through 17.636 for the VIOMPSP. We would also state that the acceptance agreement must include a mobility agreement, an agreement to accept the payment of the scholarship, an agreement to perform the obligated service, and an agreement to maintain enrollment and attendance in the approved HPSP or VIOMPSP course, to include maintaining an acceptable level of academic standing. The terms of the “acceptance agreement” are stated in 38 U.S.C. 7504 and 7604, and are specified throughout these proposed regulations as the requirements of the particular programs. This proposed definition would be consistent with the statutory requirements, current regulatory requirements, and these proposed regulations. Without a mobility agreement and an agreement to perform obligated service, we cannot ensure future VA employment. Without an agreement to accept payment of the scholarship and maintain appropriate academic standings, we cannot ensure completion of the course of education.

We propose to delete current paragraph (d), which defines “advanced clinical training,” because this term is

not used in the current or proposed HPSP regulations. The term is used only once in the VIOMPSP regulations. Therefore, we would defer to the common dictionary meaning of the term.

Current § 17.601(c) defines the term “affiliation agreement” to mean “a Memorandum of Affiliation between a Department of Veterans Affairs health care facility and a school of medicine or osteopathy.” We propose to amend this definition to eliminate the reference to “Memorandum of Affiliation” and, in its place, explain what the agreement entails. The new definition provides that an affiliation agreement is “a legal document that enables the clinical education of trainees at a VA or non-VA medical facility. An affiliation agreement is required for all education or training that involves direct patient contact, or contact with patient information, by trainees from a non-VA institution.” We would eliminate the requirement that the school be a school of medicine or osteopathy because scholarships may be offered to applicants pursuing degrees offered in schools other than traditional schools of medicine or osteopathy.

We propose to add a definition of “credential” to mean “the licensure, registration, certification, required education, relevant training and experience, and current competence necessary to meet VA’s qualification standards for employment in certain healthcare occupations.” VA’s qualification standards for employment in certain healthcare occupations are found in VA Handbook 5005. We would not include these employment standards in this rulemaking because such employment standards are not regulated by statute, and are beyond the scope of this rulemaking.

Current § 17.601(h) defines “degree” with language specific to the administration of the HPSP. We propose to amend this definition, which would be substantially similar to the current definition, would meet the needs of both programs, and would, therefore, be applicable to both HPSP and VIOMP. We would define the term “degree” to mean the successful completion of the course of study for which the HPSP or the VIOMPSP was awarded. We would state that VA recognizes the following degrees for purposes of the HPSP: “A doctor of medicine; doctor of osteopathy; doctor of dentistry; doctor of optometry; doctor of podiatry; or an associate, baccalaureate, master’s, or doctorate degree in another healthcare discipline needed by VA.” We would also state that VA recognizes a bachelor’s, master’s, education

specialist or doctorate that meets the core curriculum and supervised practice requirements in visual impairment and blindness for purposes of the VIOMPSP.

Current § 17.601(t) defines “degree completion date” to mean “the date on which a participant completes all requirements of the degree program.” We propose to not include this term because it is not used throughout the proposed HPSP or VIOMPSP regulations.

Current § 17.601(i) defines the term “full-time student.” However, because each school defines a full-time student differently, we propose to simplify the definition of “full-time student” to now mean “an individual who meets the requirements for full time attendance as defined by the school in which they are enrolled.”

We propose to add a definition for “HPSP” to mean “the VA Health Professional Scholarship Program authorized by 38 U.S.C. 7601 through 7619.” This proposed definition would establish a distinct acronym for the VA Health Professional Scholarship Program for ease of use throughout these regulations.

We propose to add a definition for “mobility agreement” to mean “a signed legal document between VA and a participant of the HPSP or VIOMPSP, in which the participant agrees to accept assignment at a VA facility selected by VA where he or she will fulfill the obligated service requirement.” A mobility agreement is a required component of all participants’ acceptance agreements and may require relocation to another geographic location. This proposed definition would be consistent with 38 U.S.C. 7502 and 7603, and with the manner in which the term was used in previously administering the HPSP when that program was active.

We propose to define “obligated service” to mean “the period of time during which the HPSP or VIOMPSP participant must be employed by VA in a full-time clinical occupation for which the degree prepared the participant as a requirement of the acceptance agreement.” We would define “obligated service” because it is an essential element of the acceptance agreement.

Current § 17.601(j) defines “other educational expenses” to mean “a reasonable amount of funds determined by the Secretary to cover expenses such as books, and laboratory equipment.” This defined term is only used in § 17.606(a)(1)(ii), which states that a scholarship award will consist of “other educational expenses, including books and laboratory equipment.” Thus, the

meaning of the term when used in the substantive regulation is clear, and a separate definition is unnecessary. We, therefore, propose to delete this term from § 17.601.

Current § 17.601(r) defines “part-time student” to mean “an individual who is a Department of Veterans Affairs employee permanently assigned to a Department of Veterans Affairs health care facility who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time but not less than half-time basis.” This definition continues to be applicable and correct for the HPSP. However, participants of the VIOMPSP are not required to be VA employees. We propose to define “part-time student” using the current definition in § 17.601 with minor stylistic changes. We would define part-time student for purposes of the HPSP and for purposes of the VIOMPSP. The only distinction between the two definitions would be that the HPSP part-time student would be a VA employee.

Current § 17.601(n) defines “participant or scholarship program participant” to mean “an individual whose application to the Scholarship Program has been approved and whose contract has been accepted by the Secretary and who has yet to complete the period of obligated service or otherwise satisfy the obligation or financial liabilities of the Scholarship Contract.” We propose to amend the definition to read as follows: “[A]n individual whose application to the HPSP or VIOMPSP has been approved, whose acceptance agreement has been consummated by VA, and who has yet to complete the period of obligated service or otherwise satisfy the obligation or financial liabilities of such agreement.” We would make this change so that the definition could apply to both the HPSP and the VIOMPSP. We also would not continue to use the term “Scholarship Contract” in the definition, because this is not a term used throughout the proposed HPSP or VIOMPSP regulations. We would instead use the term “acceptance agreement,” which we are proposing to define in this rulemaking.

Current § 17.601(k) defines the term “required educational equipment” to mean “educational equipment which must be rented or purchased by all students pursuing a similar curriculum in the same school.” We propose to delete this term because it is not used throughout the proposed HPSP or VIOMPSP regulations.

Current paragraph (m) of § 17.601 defines “Scholarship Program or Scholarship” to mean “the Department

of Veterans Affairs Health Professional Scholarship Program authorized by section 216 of the Act.” The current definition uses the section of the public law as the authority citation for the HPSP. We propose to define “Scholarship Program” as “the VA Health Professional Scholarship Program (HPSP) authorized by 38 U.S.C. 7601 through 7619.” This change is made to cite the corresponding statutes that authorize the HPSP. Citing the statutes instead of the public law is a more accurate way of stating the authority for the HPSP. We are retaining this definition because it still applies to existing HPSP regulations that are not amended by this rulemaking. However, we would not use the term “Scholarship Program” in the new VIOMPSP regulations.

Current paragraph (o) of § 17.601 defines the term “school.” We propose to amend the current definition to apply to the HPSP and the VIOMPSP. We would state that “school means an academic institution that is accredited by a body or bodies recognized for accreditation by the U.S. Department of Education or by the Council for Higher Education Accreditation (CHEA).” We would state that for purposes of the HPSP a school would “offer [ ] a course of study leading to a degree in a healthcare service discipline needed by VA.” We would also state that for purposes of the VIOMPSP a school would “offer [ ] a course of study leading to a degree in visual impairment or orientation and mobility.” We would move the authority citation after paragraph (o) to the end of this section to accord with current VA conventions for citing authorities.

Current § 17.601(p) defines “school year” to mean “for purposes of the stipend payment, all or part of the 12-month period from September 1 through August 31 during which a participant is enrolled in the school as a full-time student.” We propose to not include the time period “from September 1 through August 31.” The commencement of a school year varies from institution to institution and limiting a school year from September 1 through August 31 may disqualify otherwise eligible participants whose school year commences on other dates. We would, therefore, define the term “school year” to mean “for purposes of the HPSP and its stipend payment, and the VIOMPSP, all or part of the 12-month period that starts on the date the participant begins school as a full-time student.”

We propose to add a definition for “VA.” We would define VA as “the Department of Veterans Affairs.” The current regulations were written a long

time ago, and they often refer to the “Secretary.” However, the modern trend in our regulations is to refer to “VA” and not the “Secretary.” We would use the term “VA” instead of the term “Secretary” throughout this rulemaking for ease of use and readability, consistent with 38 U.S.C. 301. We acknowledge that regulations not affected by this rulemaking still contain the term “Secretary.”

Current paragraph (s) of § 17.601 defines a “Department of Veterans Affairs employee” as “an individual employed and permanently assigned to a VA health care facility.” In order to include potential applicants who are VA employees, but who are not employed in a VA medical center, we propose to eliminate the reference to VA healthcare facilities. We also propose to refine our definition of VA employee to now mean “an individual permanently employed by VA.” A “permanently employed” individual does not include an individual who is employed temporarily or on a contractual basis.

Current paragraph (u) of § 17.601 defines “VA health care facility” to mean “Department of Veterans Affairs medical centers, medical and regional office centers, domiciliaries, independent outpatient clinics, and outpatient clinics in regional offices.” We propose to amend this definition to remove outdated references to VA clinics, such as outpatient clinics in regional offices that no longer exist. The updated definition would incorporate current VA medical facilities, and would define VA healthcare facility to mean “a VA medical center, independent outpatient clinic, domiciliary, nursing home (community living center), residential treatment program and any of a variety of community based clinics (including community based outpatient clinics, outreach clinics, rural health resource centers, primary care telehealth clinics, and Vet Centers), consolidated mail outpatient pharmacies, and research centers.”

We propose to add a definition for “VIOMPSP” to mean “the Visual Impairment and Orientation and Mobility Professional Scholarship Program authorized by 38 U.S.C. 7501 through 7505.” This proposed definition would establish a distinct acronym for the Visual Impairment and Orientation and Mobility Professional Scholarship Program that would allow for ease of use throughout these regulations.

The current authority for this section is 38 U.S.C. 7633. We propose to amend this authority citation to include the authority for the newly added definitions. The authority citation

would be 38 U.S.C. 301, 7501(a)(1), 7504, 7602(a), 7604(1)(B), and 7633.

There is a collection number at the end of current § 17.601. Proposed § 17.601 would list the definitions that apply to the HPSP and the VIOMPSP. A collection number is not required at the end of a definitions section. We, therefore, propose to delete such collection number and relocate it where it is appropriate, namely following §§ 17.604, 17.612, 17.629, and 17.636.

#### *17.602 Eligibility for the HPSP*

We propose to amend § 17.602 by changing the title of the section from “[e]ligibility” to “[e]ligibility for the HPSP.” Current paragraph (a)(1) states that a participant must “[b]e accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State”. We would state that the participant must be “unconditionally accepted for enrollment” to specify that the participant’s enrollment is not contingent upon meeting a condition or requirement that may or may not be met by the participant at the start of the school year. This condition or requirement may prevent a participant from enrolling in a school, and as such cause the participant to be in breach of the acceptance agreement.

We would also add a new paragraph (a)(6). Proposed paragraph (a)(6) would require participants in the HPSP to perform clinical tours while they are enrolled in the course of education or training as part of their acceptance agreement. Under 38 U.S.C. 7618(b), VA must “require participants in [the HPSP] to perform clinical tours in assignments or locations determined by the Secretary while the participants are enrolled in the course of education or training for which the scholarship is provided.” We note that the statute authorizes VA to determine “assignments and locations” of the clinical tour. In practice, VA attempts to make such determinations while participants are still pursuing their degrees, to facilitate their transition to VA employment, and VA attempts to assign participants in facilities located as close as possible to the participant’s educational institution, unless the participant requests a different location and VA is able to accommodate that request.

#### *17.603 Availability of HPSP Scholarships*

We propose to amend § 17.603 by changing the title of the section from “[a]vailability of scholarships” to “[a]vailability of HPSP scholarships.” We would also add a new paragraph (b) and the current paragraph, reworded for

clarity, would be redesignated as paragraph (a).

Proposed paragraph (b) would authorize VA to grant a scholarship in a discipline or program for participation in HPSP if VA determines that such discipline or program “is necessary for the improvement of healthcare of veterans.” The authority citation for this change would be 38 U.S.C. 7612(b)(2), which authorizes HPSP scholarship awards in a field of education or training leading to employment as an appointee under 38 U.S.C. 7401(1) and (3). In turn, section 7401(1) and (3) contains a long list of disciplines, as well as authority to add additional classes that meet certain strict statutory criteria and in accordance with the procedural restrictions specified by statute. Rather than restate that list in the proposed rule, we would simply refer to section 7401(1) and (3) in the regulation text.

#### 17.604 *Application for the HPSP*

We propose to amend the title of § 17.604 from “[a]pplication for the scholarship program” to “[a]pplication for the HPSP.” We also propose to amend § 17.604 for clarity.

The current regulation states that an applicant for an HPSP scholarship “must submit an accurate and complete application” that includes “a signed written contract to accept payment of a scholarship and to serve a period of obligated service.” It does not state that a mobility agreement is required. A mobility agreement is part of the acceptance agreement in which the participant agrees to accept assignment wherever VA will assign him or her to fulfill the obligated service with VA. We would state that “[a]n applicant for the HPSP must submit an accurate and complete application including a signed written acceptance agreement.” This statement would be consistent with prior practice and 38 U.S.C. 7603. The period of obligated service is further explained in § 17.607.

#### 17.605 *Selection of HPSP participants*

We propose to amend § 17.605 by changing the title of the section from “[s]election of participants” to “[s]election of HPSP participants.” On August 18, 1983, VA amended § 17.605 by adding a new paragraph (d) and redesignating the existing paragraph (d) as paragraph (e). 48 FR 37,398. However, paragraph (a) referenced the original paragraph (d) and such reference was not amended to correctly reflect the redesignated paragraph (e). However, we redesignated paragraph (e) in this rulemaking, as explained below, to proposed paragraph (f). We propose

to correct paragraph (a) by amending the references to “paragraph (d) of this section” to correctly refer to “paragraph (f) of this section.”

We would also amend paragraph (a) to state that if there are more applicants to the HPSP than there are available funds, VA will select the participants based on a random method of selection, considering veterans first among all equally qualified candidates. This method of selection supports VA’s hiring mission to attract, recruit and hire veterans into the VA workforce while also being consistent with the training and hiring goals of the HPSP. We would make other minor stylistic changes for ease of readability.

We propose to add a new paragraph (d) that would require VA to notify in writing those individuals whose applications are approved, and would state that an individual becomes a participant of the HPSP upon receipt of VA’s written approval. Although current § 17.605 does not contain a similar provision, in practice VA has always provided such notification to HPSP applicants and has considered applicants to be participants upon their receipt of such notice. We believe that including this requirement in regulation will make it easier to understand the application and approval process. We would also redesignate current paragraphs (d) and (e) as proposed paragraphs (e) and (f), respectively.

#### 17.607 *Obligated service*

Current § 17.607(b)(1) governs the beginning date of a participant’s obligated service. The second sentence of current paragraph (b)(1) states that “[t]he Secretary shall appoint the participant to such position within 60 days after the participant’s degree completion date, or the date the participant becomes licensed in a State to practice in the discipline for which the degree program prepared the participant, whichever is later.” We propose to amend this provision to incorporate the language of 38 U.S.C. 7618(a), as amended by the 2010 Act. Section 7618(a) states that the HPSP shall be modified to require that program graduates be fully employed “as soon as possible, if not immediately, upon graduation and completion of necessary certifications,” and that VA shall “actively assist and monitor graduates to ensure certifications are obtained in a minimal amount of time following graduation.” The addition of this language is essential in maintaining VA’s part of the acceptance agreement by employing HPSP participants in a timely manner. Although VA will be actively working to ensure positions are

available for these participants, we believe the current allowance of 60 days does not allow a sufficient window for VA or for the participants. We propose to extend the time limit from 60 to 90 days. We will strive to make the appointment as soon as possible within those 90 days. In order to incorporate the proposed extension of the time limit, and to ensure that VA complies with the acceptance agreement, we would state in proposed paragraph (b)(1) that “VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant receives his or her degree, or the date the participant becomes licensed in a State or becomes certified, whichever is later.” VA will actively assist and monitor graduates to ensure credentials are obtained in a minimal amount of time following graduation. We would also state: “If a participant fails to obtain his or her degree, or fails to become licensed in a State or become certified no later than 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.” This statement would alert participants of the consequences of not upholding the acceptance agreement. We would also reformat current § 17.607(b)(1) into three paragraphs for ease of readability and amend the current language for clarity.

We propose to amend the authority citation after paragraph (b) of § 17.607 to include 38 U.S.C. 7618(a), which was amended by the 2010 Act.

As required by 38 U.S.C. 7618(c), we would state in paragraph (b)(1)(iii) that “VA will ensure that the participant is assigned a mentor who is employed at the same facility where the participant performs his or her obligated service at the commencement of such service.” The appointment of a mentor will allow the participant an easier transition into the VA healthcare system.

We propose to amend and reorganize current paragraph (c) for ease of readability. We would organize the current rules addressing the service obligation of full-time students in a new paragraph (c)(1), which would also include the new requirement of 38 U.S.C. 7612(c)(1)(B) that HPSP participants must agree to serve as full-time clinical VA employees “for no less than 2 years.” The current regulation, in accordance with 38 U.S.C. 7612(c)(1)(B) (1991) prior to the 2010 Act, requires a minimum of only 1 year of obligated service.

We would address the service obligation of part-time students in proposed paragraph (c)(2). We would make no revisions to the substantive

content of current paragraph (c) governing part-time students. We would add, however, that the obligated service for a part-time student must be satisfied by full-time clinical employment with VA. We would add this statement to alert potential participants that they may not fulfill the service obligation on a part-time basis.

We propose to amend the authority citation after paragraph (c) of § 17.607 to include 38 U.S.C. 7618(c), which was amended by the 2010 Act.

Current § 17.607(d) states that the participant “must be willing to move to another geographic location for service obligation.” We would amend paragraph (d) to state that the participant’s willingness to move is in accordance with his or her mobility agreement. As explained previously, the mobility agreement is part of the acceptance agreement between the participant and VA. By adding this statement we would make clear that the participant will have agreed to such movement as part of the application process for the program.

Current § 17.607(d) states in part that “[a] participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized.” Because the participant may receive a degree that is not associated with the VA position in which he or she was employed at the commencement of the HPSP, VA may not be able to guarantee the obligated service in that same healthcare facility. We would, therefore, now state that the participant may “serve the period of obligated service at the healthcare facility where the individual was assigned when the scholarship was authorized, if there is a vacant position which will satisfy the individual’s mobility agreement at that facility.”

#### 17.611 *Bankruptcy*

Current § 17.611 states that “[a]ny payment obligation incurred may not be discharged in bankruptcy under title 11 U.S.C. until 5 years after the date on which the payment obligation is due.” This regulatory language is derived from 38 U.S.C. 7634(c), which states: “An obligation of a participant under the Educational Assistance Program (or an agreement thereunder) for payment of damages may not be released by a discharge in bankruptcy under title 11 before the expiration of the five-year period beginning on the first date the payment of such damages is due.” Section 7634(c) applies to the HPSP program because that program is part of

the Educational Assistance Program under chapter 76 of title 38, United States Code. We propose to add an additional sentence to clarify that the rule applies to both HPSP and VIOMPS, pursuant to 38 U.S.C. 7505(d), which is substantively identical to 38 U.S.C. 7634(c).

Because § 17.611 would now apply to both the HPSP and VIOMPS, we would add 38 U.S.C. 7505(d) to the authority citation in § 17.611.

#### 17.612 *Cancellation, waiver, or suspension of obligation*

Current § 17.612 concerns cancellation, waiver, or suspension of obligations under the HPSP.

Our authority for current § 17.612(a) is 38 U.S.C. 7634(a), which states that a participant’s obligations under HPSP are cancelled upon the participant’s death. Our authority for the rest of current § 17.612, paragraphs (b) through (d), is 38 U.S.C. 7634(b), which allows VA to “prescribe regulations providing for the waiver or suspension of any obligation of a participant for service or payment under [HPSP] (or an agreement under [HPSP]) whenever noncompliance by the participant is due to circumstances beyond the control of the participant or whenever [VA] determines that the waiver or suspension of compliance is in the best interest of the United States.”

Proposed § 17.612(a)(1) would make this section applicable to both HPSP and VIOMPS. The current rules and the changes proposed by this rulemaking notice are fully consistent with our authority under chapter 75. Section 7505(c) requires VA to prescribe regulations “providing for the waiver or suspension of any obligation of an individual for service or payment \* \* \* whenever (1) noncompliance by the individual is due to circumstances beyond the control of the individual; or (2) the Secretary determines that the waiver or suspension of compliance is in the best interest of the United States.”

Proposed paragraph (a)(2) restates current paragraph (a), without change.

Under the current rule, we authorize a one-year waiver or suspension of service or payment obligations that may be “renew[ed]” based on an application “setting forth the basis, circumstances, and causes which support the requested action.” 38 CFR 17.612(b)(1). Waivers or suspensions may be granted whenever compliance is impossible or whenever granting the application would be in the best interests of VA. 38 CFR 17.612(b)(2). Under current paragraphs (c) and (d), we discuss the basis for a finding of such impossibility. We do not propose to revise these paragraphs, and believe that it is consistent with the

authorizing statutes to make these bases applicable to both the HPSP and VIOMPS.

We propose to amend current paragraph (b)(1) to add two new requirements for the granting of a waiver or suspension. The first requirement would be that a participant must submit a written request for a waiver or suspension of his or her service or payment obligation no later than 1 year after the date the participant is notified he or she is in breach of his or her contract. The second requirement would obligate a participant to comply with a request by VA for additional information no later than 30 days after the request was made. The addition of these two requirements would eliminate ambiguity regarding dates of submission of waiver or suspension requests, and further submission of additional evidence. This change is consistent with our authority under 38 U.S.C. 7634 to prescribe regulations on this issue.

We propose to define the terms “waiver” and “suspension” for consistency of use. We would state that “[a] waiver is a permanent release by VA of the obligation either to repay any scholarship funds that have already been paid to or on behalf of the participant, or to fulfill any other acceptance agreement requirement. If a waiver is granted, then the waived amount of scholarship funds may be considered taxable income.” Federal tax regulations, at 26 CFR 1.61–12(a), state: “The discharge of indebtedness, in whole or in part, may result in the realization of income.” IRS Publication 525 (2010), further states that “if a debt you owe is canceled or forgiven, other than as a gift or bequest, you must include the canceled amount in your income.” We would state that the waived amount of scholarship funds may be taxable income to alert the participant of this potential tax liability.

In regard to suspensions, we would state that VA may approve an initial request for suspension for a period of up to one year. However, while waivers are permanent releases from obligations, suspensions are only temporary and will be granted initially for one year. Participants may request extension of a suspension for one additional year. The participant will be in breach of his or her acceptance agreement once the suspension period has ended. We would also state that if VA approves a suspension, “VA will temporarily discontinue providing any scholarship funds to or on behalf of the participant while the participant’s scholarship is in a suspended status” or “temporarily delay the enforcement of acceptance agreement requirements.”

We propose to add a new paragraph (e) to § 17.612 that would state that “[a]ny previous participant of any federally sponsored scholarship program who breached his or her acceptance agreement or similar agreement in such scholarship program is not eligible to apply for another scholarship. This includes participants who previously applied for, and received, a waiver under this section.” If a participant has breached the acceptance agreement under any other federally sponsored scholarship program such participant would be at a greater risk of breaching another acceptance agreement. VA has limited funds to award scholarships and VA would benefit if such funds were expended on participants who have not breached an acceptance agreement. Section 7634 of 38 U.S.C. allows VA to prescribe regulations for the “waiver or suspension of any obligation of a participant for service or payment under the Educational Assistance Program.” In view of the similarities between the HPSP and VIOMPSP, we also propose to allow waivers and suspensions for the VIOMPSP, even though that program is authorized by chapter 75. We believe that our authority to regulate waivers and suspensions under 38 U.S.C. 7505(c) and 7634 includes the authority to regulate the effect that granting a waiver or suspension should have on the participant’s eligibility for future scholarships. We propose to bar a participant who previously breached an HPSP or VIOMPSP acceptance agreement, including those who were granted a waiver after they had breached the agreement. A participant who is granted a suspension of benefits would not be considered to be in breach of his or her acceptance agreement because such participant is expected to resume his or her course of study or obligated service after the period of suspension has concluded. Due to the limited availability of these scholarship funds, we believe it is inappropriate to award scholarships to individuals who are at risk for noncompliance, and believe that it is rational to assume that an individual who previously breached a contract has a higher risk of doing so again over one who has not previously breached a contract. It is also more equitable to distribute funds to persons who have not previously been offered the opportunity to participate in one of these programs, rather than to persons who have been given the opportunity but who failed to complete their obligations.

We propose to add a new paragraph (f). Paragraph (f) would state that

“[d]ecisions to approve or disapprove waiver requests are final and binding determinations” and not subject to reconsideration or appeal. This paragraph is based on current practice and would clarify the finality of decisions made under 38 U.S.C. 7505(c) and 7634(b), which allow VA to prescribe regulations that provide for the waiver or suspension of any obligation of an individual for service or payment.

Finally, as a technical matter, we will revise § 17.612 so that the authority citations for the section appear at the end of the section.

### **Proposed Visual Impairment and Orientation Mobility Professional Scholarship Program Regulations**

#### *17.625 Purpose*

Proposed § 17.625 would parallel § 17.600, however, it would be specifically applicable to the VIOMPSP. Proposed section 17.600 would recognize that both VA and non-VA employees may be eligible for the HPSP. However, proposed § 17.625 would state that the VIOMPSP would be used primarily as a recruitment tool, and “will be publicized throughout educational institutions in the United States, with an emphasis on disseminating information to such institutions with high numbers of Hispanic students and to historically black colleges and universities.” The prospective participants in the VIOMPSP are not the same as the prospective participants in the HPSP. We would make this distinction clear in proposed § 17.625. These requirements would be consistent with 38 U.S.C. 7501.

#### *17.626 Definitions*

As stated in the preamble for proposed § 17.601, in order to eliminate redundancies in the HPSP and the VIOMPSP, the definitions in § 17.601 would apply to both of these programs. In order to alert the reader that the defined terms for the VIOMPSP are contained in § 17.601, we propose to state in § 17.626 that “[f]or the definitions that apply to §§ 17.625 through 17.636, see § 17.601.”

#### *17.627 Eligibility for the VIOMPSP*

Although proposed § 17.627 would parallel the structure of current § 17.602, there would be several substantive eligibility distinctions between HPSP and the VIOMPSP.

Paragraph (a) would set forth the basic eligibility requirements for VIOMPSP. Pursuant to 38 U.S.C. 7501(a), VIOMPSP would be available to U.S. citizens who

are “accepted for enrollment or currently enrolled in a program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree” and who submit a VIOMPSP signed agreement. We would also include the requirement to submit an application in order to be considered for the VIOMPSP, as set forth in 38 U.S.C. 7502. We would state that the participant must be “unconditionally accepted for enrollment” to specify that the participant’s enrollment is not contingent upon meeting a condition or requirement that may or may not be met by the participant at the start of the school year. This condition or requirement may prevent a participant from enrolling in a school, and as such cause the participant to be in breach of the acceptance agreement. A “dual degree” refers to a course of study that enables an individual to become dually certified in two of the three professional certifications offered by the Academy for Certification of Visual Rehabilitation and Education Professionals (ACVREP). ACVREP offers certification in orientation and mobility, low vision therapy, and vision rehabilitation therapy (formerly known as blind rehabilitation teaching). A dual degree would include the core curriculum and supervised practice in two of these three certification areas during the participant’s course of study. The requirement of citizenship is consistent with the overall structure and purpose of chapter 75. Under section 7501(b), the stated purpose of the program is, in part, to increase the supply of qualified blind rehabilitation specialists for the United States, and under section 7501(c), VA is required to publicize the program throughout the U.S. After completion of their education, participants must serve as full-time clinical VA employees for a minimum of three years. These requirements could be harder to meet in the case of non-U.S. citizens whose ability to remain in this country is contingent on factors beyond VA control.

Unlike HPSP scholarship recipients who, under current § 17.602(b), may receive HPSP benefits as part-time students provided that they are current, full-time VA employees at the time that the scholarship is awarded and for the duration of the scholarship, VIOMPSP scholarship recipients are not required to maintain VA employment, so we would not include a parallel provision requiring part-time students to be and remain employed by VA in the eligibility regulation for VIOMPSP.

Proposed paragraph (b) would parallel current § 17.602(c), which would not be



revised by this rulemaking. Current § 17.602(c) bars HPSP eligibility for any applicant “who, at the time of application, owes a service obligation to any other entity to perform service after completion of the course of study.” This bar is consistent with 38 U.S.C. 7602(b), which states that an individual is ineligible for the HPSP or VIOMPSP “if the individual is obligated under any other Federal program to perform service after completion of the course of education or training of such individual.” The current rule, applicable to HPSP, bars eligibility for any individual who owes a service obligation—irrespective of whether that obligation is the result of a Federal program, because such an obligation would complicate (or render impossible) the individual’s obligation to provide service to VA.

#### *17.628 Availability of VIOMPSP scholarships*

Proposed § 17.628 would parallel proposed § 17.603(a), clarifying that “VA will make awards under the VIOMPSP only when VA determines it is necessary to assist in alleviating shortages or anticipated shortages of personnel in visual impairment or orientation and mobility programs.” Also consistent with § 17.603(a), we would state that VA’s determination as to the number of VIOMPSP scholarships that will be awarded in a given fiscal year, as well as the number of full- and/or part-time students who will receive such awards, is subject to the availability of appropriations. This would be consistent with 38 U.S.C. 7501(a)(1) and with the way that VA had previously administered, and proposes to continue to administer, the HPSP program.

#### *17.629 Application for the VIOMPSP*

Proposed § 17.629 would state the application procedure for the VIOMPSP. Proposed paragraph (a) would state the procedure for applying for the VIOMPSP. Under proposed paragraph (a), the potential participant “must submit an accurate and complete application,” and the application would include a signed acceptance agreement. This proposed paragraph would be in accordance with 38 U.S.C. 7502(a), and would be consistent with the administration of the HPSP.

Proposed paragraph (b) would state VA’s duty to inform a potential participant prior to acceptance in the VIOMPSP of his or her rights and liabilities if accepted into the program. We would also provide to anyone applying to the program the terms and conditions of participation in the

VIOMPSP and service in VA. These VA duties are substantively identical to 38 U.S.C. 7502(a)(2).

#### *17.630 Selection of VIOMPSP participants*

Proposed § 17.630 would parallel current § 17.605, as revised by this rulemaking. However, several paragraphs in § 17.605 do not apply to the VIOMPSP. We would not include the selection criteria for part-time students from § 17.605(c) that pertain to VA employment at the time of application because, as stated above in the discussion of § 17.627, part-time students in the VIOMPSP are not required to be full-time VA employees. We would also not include a paragraph to parallel current § 17.605(e) because VIOMPSP will not offer continuation awards.

Our authority for the selection criteria in proposed § 17.630 would be 38 U.S.C. 7504(3). The criteria, as noted, mirror the current criteria for HPSP, which, while that program was active, were easy for participants to understand and for VA to apply. The fact that Congress decided to renew the HPSP, and established a substantively similar program, the VIOMPSP, supports continuing to interpret these statutory authorities and to continue to apply the existing regulatory criteria in the same manner as we have done in the past.

Proposed paragraph (a) would state the general provisions for selecting a participant for the VIOMPSP. VA will give priority consideration to applicants entering their final year of education or training, in order to achieve our goal of recruiting new healthcare practitioners on an expedited basis through the VIOMPSP. We would state that if there are more applicants to the VIOMPSP than there are available funds, VA will select the participants based on a random method of selection, considering veterans first among all equally qualified candidates. This is consistent with the procedures for the HPSP outlined in § 17.605(a), as amended by this rulemaking. This method of selection supports VA’s hiring mission to attract, recruit and hire veterans into the VA workforce.

We would state the selection criteria for participants in the VIOMPSP in proposed paragraph (b). These criteria would include academic performance, work experience, faculty and employer recommendations, or career goals. These criteria are identical to the criteria used to select HPSP participants, and VA has found through the administration of that program that they accurately identify qualified individuals and that they

indicate a likelihood of successful completion of a course of study.

Proposed paragraph (c) would require VA to notify in writing those individuals whose applications are approved, and would state that an individual becomes a participant of the VIOMPSP upon receipt of VA’s written approval. As previously stated in this rulemaking, current § 17.605 does not contain a similar provision. In practice, however, VA has always provided such notification to HPSP applicants and has considered applicants to be participants upon their receipt of such notice. We believe that including this requirement in regulation will make it easier to understand the application and approval process.

Proposed paragraph (d) would indicate the period of time for which VA may award a scholarship under the VIOMPSP for full-time and part-time participants. We would state that VIOMPSP scholarships are awarded for the number of years that are required to complete program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree. We would also state that the number of years covered by an individual scholarship will be equal to the number of years that the participant has yet to complete to obtain a degree. Awards of scholarships under the VIOMPSP are subject to the availability of funds, and VA may award a full-time student a scholarship for a minimum of 1 year to a maximum of 4 years. VA may also award a part-time student a scholarship for a minimum of 1 year to a maximum of 6 years.

#### *17.631 Award procedures*

Proposed paragraph (a) of § 17.631 would state the maximum amount that a participant may receive while enrolled in the VIOMPSP. The amount a participant may receive per year may not exceed the total cost of tuition and fees for the academic year for the degree program in which the participant is enrolled, up to a maximum annual amount for a full-time student of \$15,000.00. We would state that payments to scholarship participants are exempt from Federal taxation. We would add this clarifying language in order to eliminate any doubt that the participant may have regarding any possible Federal tax liability upon receipt of the scholarship award. We would also state that the total amount of assistance per year provided to a participant who is a part-time student shall bear the same ratio to the amount that would be paid if the participant were a full-time student as the coursework carried by the participant to



full-time coursework. The total amount of assistance a participant may receive under the VIOMPSP is \$45,000.00. We would clarify that if an individual is enrolled in a program of study leading to a dual degree, the tuition and fees would not exceed the amounts necessary for the minimum number of credit hours to achieve such dual degree. We would add this clarification to alert the participants that VA would not issue payments for additional non-requisite courses that the participant may have enrolled in to complement the dual degree. VA would only provide assistance to the extent that VA's financial assistance, coupled with that obtained through other sources, does not exceed the tuition and fees for the degree for which the VIOMPSP was granted. We would also state that VA will directly issue payments on behalf of the participant to the school in which the participant is enrolled for the amount of tuition and fees. This proposed paragraph would apply 38 U.S.C. 7503, without substantive change.

Proposed paragraph (b) would state that if a participant of the VIOMPSP repeats a course, VA would not pay for the additional costs relating to the repeated course work. We believe that it is important to restrict payments in this manner to ensure that our limited VIOMPSP funds are spent only on the best and brightest students enrolled in the program. We would also state that if scholarship payments were suspended under this section, VA will resume such payments upon notification from the school that the participant has returned from the leave-of-absence or has satisfactorily completed the repeated course work and is pursuing the course of study for which the VIOMPSP was awarded. We would require the notification from the school in order to avoid erroneous scholarship payment in the event that a participant did not pass the repeated course or did not return from the leave-of-absence on the anticipated date.

We are authorized under 38 U.S.C. 7504(3) to add to the acceptance agreement "any other terms and conditions that [VA] considers appropriate for carrying out" the VIOMPSP. A similar provision is set forth in 38 U.S.C. 7604(5), for purposes of the HPSP, which we implemented in 38 CFR 17.606(b). We recognize that § 17.606(b) is not explicitly addressed by statute and the regulatory language is not in the acceptance agreement itself. However, the proposed definition of acceptance agreement would require consistency with regulations, and we believe that it is important to note this

restriction in regulation, as we did for the HPSP, in order to provide adequate notice of the restriction.

#### *17.632 Obligated service*

We would state the requirements for the participant's obligated service to VA for the VIOMPSP in proposed § 17.632. Proposed paragraph (a) would state that, except as provided in paragraph (d) of this section, a participant would serve as a full-time clinical VA employee in the rehabilitation practice of the participant's discipline in an assignment or location determined by VA while participating in the VIOMPSP.

Proposed paragraph (b) would state when the participant's obligated service would begin. Such service would begin "on the date on which the participant obtains any required applicable credentials and when appointed as a full-time clinical VA employee in a position for which the degree prepared the participant." Proposed paragraph (b) would be in accordance with 38 U.S.C. 7504(3). We would state that VA will appoint the participant in a full-time clinical position as soon as possible, but no later than 90 days after the date the participant receives his or her degree, or the date the participant obtains the required credentials, whichever date is later. Even though VA would like to employ the participant as soon as possible, we must allow time for the participant to obtain the required credentials. Such credentials do not have to be obtained immediately after the completion of the course. However, VA may not employ the participant in a clinical position without such credentials. The 90 days would allow the participant sufficient time to obtain the necessary credentials. We would also state that "[i]f a participant fails to obtain his or her degree, or fails to obtain any required applicable credentials within 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement." As previously stated in this rulemaking under proposed paragraph § 17.607(b), we would add this statement to alert participants of the consequences of not upholding the acceptance agreement.

Proposed paragraph (c) would state that the duration of the obligated service would be for 3 calendar years. Such obligated service must be completed no later than 6 years after completion of the educational program for which the scholarship was awarded and a degree was received. These provisions are stated in 38 U.S.C. 7504(2)(D).

Proposed paragraph (d) would state that, as part of the participant's mobility agreement, he or she must be willing to

accept assignment where VA assigns the obligated service. The mobility agreement is not specifically required by 38 U.S.C. 7504; however, it is part of the other terms and conditions that VA deems appropriate to carry out this program under paragraph (3) of section 7504.

Proposed paragraph (e) would state that "[n]o period of advanced clinical training will be credited towards satisfying the period of obligated service incurred under the VIOMPSP." Such clinical training may be required for completion of the required degree in blind rehabilitation or mobility, and, if so, must be completed before the participant begins the obligated service. This proposed paragraph also falls under the purview of 38 U.S.C. 7504(3).

#### *17.633 Deferment of Obligated Service*

The regulations that govern deferment of obligated service for the VIOMPSP are the same as those found in current § 17.608, which apply to the HPSP. Deferments of obligated service may be requested by participants in certain degree programs to allow them to complete an approved program of advanced clinical training. In an effort to simplify the HPSP and VIOMPSP regulations, we propose to provide a cross-reference to § 17.608 for the rules that govern deferment of obligated service, in proposed § 17.633.

#### *17.634 Failure To Comply With Terms and Conditions of Participation*

Proposed § 17.634 would parallel current § 17.610, which would not be revised by this rulemaking.

Under 38 U.S.C. 7505(a) and (b), VA is required to establish in regulation an amount that must be repaid by individuals who fail to satisfy the terms of their acceptance agreements, and that amount must be "equal to the unearned portion" of their scholarship. For purposes of the HPSP, such liability is established in 38 U.S.C. 7617 and codified in regulation at 38 CFR 17.610. As explained throughout this notice, we believe that Congress expected VA to administer the VIOMPSP in a similar manner as the HPSP, given the similarity between the applicable statutes and the intent behind their enactment. We recognize that, for purposes of a breach of a VIOMPSP agreement, Congress did not require us to use the same formulas established in 38 U.S.C. 7617 for the HPSP; however, Congress did allow us to do so by authorizing VA to establish regulations. Consequently, we believe that it is appropriate to establish a regulation for the VIOMPSP that parallels current § 17.610.

Proposed paragraph (a) would parallel current § 17.610(a). This proposed paragraph would state that if the participant fails to accept payment, or instructs the school to not accept payment, under the VIOMPSP award, he or she must pay the United States \$1,500 in liquidated damages. This dollar amount would be in addition to any service or other obligation incurred under the agreement. We note that this liquidated damages provision applies only if the participant refuses to accept payment of the scholarship, or causes a school not to accept such payment. In these cases, we have not already invested in the applicant and therefore our costs have not been significant. Moreover, the damages (monetary and nonmonetary, such as causing VA to deny another person's application based on approval of the individual's application) caused by such refusal are similar between both programs. Therefore, it is appropriate to adopt for the VIOMPSP the same \$1,500 liquidated damages amount required for the HPSP. We also recognize that the statute applicable to the VIOMPSP may not specifically contemplate liquidated damages, but we believe that it is appropriate to adopt such a provision, based on our authority to establish regulations. Liquidated damages are easier to administer, reduce administrative costs, and provide effective resolution of this matter.

Proposed paragraph (b) would be based on current § 17.610(b); however, we would provide certain clarifications. First, this paragraph would apply within one year after an individual meets a description in paragraphs (b)(1) through (4) of an individual who must pay damages under proposed paragraph (b). Second, whereas current § 17.610(b)(5) states that the damages are in lieu of "performing any service obligation," we would state that these damages would otherwise fulfill the terms of the acceptance agreement. Technically, under the acceptance agreement, the individual is required to stay enrolled in school and maintain acceptable academic standing; however, once he or she has met any of the criteria in paragraphs (b)(1) through (4), three of which relate to withdrawing from school, those obligations by definition cannot be fulfilled. Moreover, we want the rule to be clear that once the damages are paid, the individual's liability is resolved. Proposed paragraph (b)(4), unlike current § 17.610(b), would state that if a participant fails to become certified in the discipline for which the degree prepared the participant, if applicable, within 180 days after such

person becomes eligible to apply for certification, the participant is considered to be in breach of the acceptance agreement. The requirements for obtaining a certification under the VIOMPSP are not the same as the requirements for becoming licensed to practice a discipline for the HPSP. We believe that 180 days would provide ample time to obtain the necessary certification for the VIOMPSP.

We also note that the amount of damages would be the full amount of VIOMPSP funds paid on the individual's behalf. This is the same amount paid by an HPSP participant. The authority for this provision is 38 U.S.C. 7505(a), which authorizes VA to collect the "unearned portion" of VIOMPSP funds at the time of breach. All of the criteria in § 17.634(b)(1)-(4) apply prior to the time at which the participant fulfills his or her obligated service to VA, and it is through such obligated service that the participant earns his or her scholarship.

The classes of individuals subject to the repayment amount set forth in proposed paragraph (b) would be established in paragraphs (b)(1) through (4). These paragraphs would parallel current § 17.610(b)(1) through (4). We would not include a provision similar to § 17.610(b)(5) because it references part-time VA employees who fail "to maintain employment in a permanent assignment in a VA health care facility while enrolled in the course of training being pursued." As we have previously stated in this rulemaking, participants in the VIOMPSP are not required to be VA employees, so those provisions of § 17.610(b)(5) would not be relevant.

Section 7505(a) of 38 U.S.C. states: "An individual who receives educational assistance under the scholarship program under this chapter shall repay to the Secretary an amount equal to the unearned portion of such assistance if the individual fails to satisfy the requirements of the agreement entered into under section 7504 of this title, except in circumstances authorized by the Secretary." Proposed § 17.634(c) would include a formula to calculate the amount the United States is entitled to recover if a participant breaches his or her acceptance agreement by failing to complete the obligated service. We would state that to calculate the unearned portion of VIOMPSP funds VA would "subtract the number of months of obligated service rendered from the total months of obligated service owed, divide the remaining months by the total obligated service, then multiply by the total amount of

VIOMPSP funds paid to or on behalf of the participant." We would also provide a formula as a visual aid for ease of readability. The proposed formula would be " $A = P((t-s)/t)$ ," in which "A" is the amount the United States is entitled to recover; "P" is the amounts paid under the VIOMPSP to or on behalf of the participant; "t" is the total number of months in the participant's period of obligated service; and "s" is the number of months of obligated service rendered. Proposed paragraph § 17.634(c) would not parallel § 17.610(c) because the statute that governs the repayment of the VIOMPSP, 38 U.S.C. 7505, is not the same as the statute that governs the repayment of the HPSP, 38 U.S.C. 7617.

#### 17.635 Bankruptcy

The regulations that govern bankruptcy for the VIOMPSP are the same as those found in § 17.611, which apply to the HPSP. In an effort to simplify the HPSP and VIOMPSP regulations, we propose to provide a cross-reference to § 17.611 for the rules that govern bankruptcy, in proposed § 17.635.

#### 17.636 Cancellation, Waiver, or Suspension of Obligation

The regulations that govern cancellation, waiver, or suspension of obligation for the VIOMPSP are the same as those found in § 17.612, which apply to the HPSP. In an effort to simplify the HPSP and VIOMPSP regulations, we propose to provide a cross-reference to § 17.612 for the rules that govern cancellation, waiver, or suspension of obligation, in proposed § 17.636.

#### Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rule if possible or, if not possible, such guidance would be superseded by this rulemaking.

#### Paperwork Reduction Act

This proposed rule includes collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking to OMB for review. OMB assigns a control number for each collection of information it approves. VA may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The VA Health Professional Scholarship Program contained a collection control number 2900-0352, which expired on April 30, 1997. We propose to establish a new collection control number for the revised VA Health Professional Scholarship Program and for the new Visual Impairment and Orientation and Mobility Professional Scholarship Program. Proposed §§ 17.604 and 17.629 contain a collection of information. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as directed by OMB.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent: By mail or hand delivery to the Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; by fax to (202) 273-9026; or through [www.Regulations.gov](http://www.Regulations.gov). Comments should indicate that they are submitted in response to “2900-AO34-VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs.”

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Proposed §§ 17.604 and 17.629 contain collections of information under the Paperwork Reduction Act of 1995 for which we are requesting approval by OMB. Under proposed §§ 17.612 and 17.636, a participant of the VA Health Professional Scholarship Program or Visual Impairment and Orientation and Mobility Professional Scholarship Program may seek a waiver or suspension of obligated service or payment under either program by submitting a written request to VA. The requirement for such a written request, however, does not constitute a collection of information under the Paperwork Reduction Act of 1995 requiring OMB approval because the anticipated number of respondents within a 12-month period is less than ten. See 5 CFR 1320.3(c).

**Title:** Application for VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs.

**Summary of collection of information:** The information required determines the eligibility or suitability of an applicant desiring to receive an award under the provisions of 38 U.S.C. 7601 through 7619, and 38 U.S.C. 7501 through 7505. The VA Health Professional Scholarship Program awards scholarships to students receiving education or training in a direct or indirect healthcare services discipline to assist in providing an adequate supply of such personnel for VA and for the United States. The Visual Impairment and Orientation and Mobility Professional Scholarship Program awards scholarships to students pursuing a program of study leading to a degree in visual impairment or orientation and mobility in order to increase the supply of qualified blind rehabilitation specialists for VA and the Nation.

**Description of the need for information and proposed use of information:** The information is needed to apply for the VA Health Professional Scholarship Program or Visual Impairment and Orientation and Mobility Professional Scholarship Program.

**Description of likely respondents:** Potential participants of the VA Health Professional Scholarship Program or

Visual Impairment and Orientation and Mobility Professional Scholarship Program.

*Estimated number of HPSP respondents per year:* 5,000.

*Estimated number of VIOMPSP respondents per year:* 1,500.

*Estimated frequency of HPSP responses per year:* once.

*Estimated frequency of VIOMPSP responses per year:* once.

*Estimated average burden per response for HPSP:* 5 hours per year.

*Estimated average burden per response for VIOMPSP:* 5 hours per year.

*Estimated total HPSP annual reporting and recordkeeping burden:* 25,000 hours per year.

*Estimated total VIOMPSP annual reporting and recordkeeping burden:* 7,500 hours per year.

### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601- 612. This proposed rule would not directly affect any small entities. Only applicants for scholarships could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by OMB, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious

inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 18, 2012, for publication.

#### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: December 18, 2012.

**Robert C. McFetridge,**

*Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons set forth in the preamble, we propose to amend 38 CFR part 17 as follows:

#### PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

2. Revise the authority citation preceding § 17.600 to read as follows:

**Authority:** 38 U.S.C. 7601–7619, 7633, 7634, and 7636.

3. Revise § 17.600 to read as follows:

##### § 17.600 Purpose.

The purpose of §§ 17.600 through 17.612 is to establish the requirements for the award of scholarships under the VA Health Professional Scholarship Program (HPSP) to students pursuing a course of study leading to a degree in certain healthcare occupations, listed in 38 U.S.C. 7401(1) and (3), to assist in providing an adequate supply of such personnel for VA. The HPSP allows VA to provide scholarship awards to facilitate recruitment and retention of employees in several hard-to-fill healthcare occupations.

(Authority: 38 U.S.C. 7601(b))

4. Revise § 17.601 to read as follows:

##### § 17.601 Definitions.

The following definitions apply to §§ 17.600 through 17.636:

*Acceptable level of academic standing* means the level at which a participant may continue to attend school under the standards and practices of the school at which a participant is enrolled in a course of study for which an HPSP or VIOMPSP scholarship was awarded.

*Acceptance agreement* means a signed legal document between VA and a participant of the HPSP or VIOMPSP that specifies the obligations of VA and the participant upon acceptance to the HPSP or VIOMPSP. An acceptance agreement must incorporate by reference, and cannot be inconsistent with, §§ 17.600 through 17.612 (for HPSP agreements) or §§ 17.626 through 17.636 (for VIOMPSP agreements), and must include:

- (1) A mobility agreement.
- (2) Agreement to accept payment of the scholarship.
- (3) Agreement to perform obligated service.
- (4) Agreement to maintain enrollment and attendance in the course of study

for which the scholarship was awarded, and to maintain an acceptable level of academic standing.

*Affiliation agreement* means a legal document that enables the clinical education of trainees at a VA or non-VA medical facility. An affiliation agreement is required for all education or training that involves direct patient contact, or contact with patient information, by trainees from a non-VA institution.

*Credential.* Credential means the licensure, registration, certification, required education, relevant training and experience, and current competence necessary to meet VA's qualification standards for employment in certain healthcare occupations.

*Citizen of the United States* means any person born, or lawfully naturalized, in the United States, subject to its jurisdiction and protection, and owing allegiance thereto.

*Degree* represents the successful completion of the course of study for which a scholarship was awarded.

(1) *HPSP.* For the purposes of the HPSP, VA recognizes the following degrees: a doctor of medicine; doctor of osteopathy; doctor of dentistry; doctor of optometry; doctor of podiatry; or an associate, baccalaureate, master's, or doctorate degree in another healthcare discipline needed by VA.

(2) *VIOMPSP.* For the purposes of the VIOMPSP, VA recognizes a bachelor's, master's, education specialist or doctorate that meets the core curriculum and supervised practice requirements in visual impairment and blindness.

*Full-time student* means an individual who meets the requirements for full time attendance as defined by the school in which they are enrolled.

*HPSP* means the VA Health Professional Scholarship Program authorized by 38 U.S.C. 7601 through 7619.

*Mobility agreement* means a signed legal document between VA and a participant of the HPSP or VIOMPSP, in which the participant agrees to accept assignment at a VA facility selected by VA where he or she will fulfill the obligated service requirement. A mobility agreement must be included in the participant's acceptance agreement. Relocation to another geographic location may be required.

*Obligated service* means the period of time during which the HPSP or VIOMPSP participant must be employed by VA in a full-time clinical occupation for which the degree prepared the participant as a requirement of the acceptance agreement.

*Part-time student* (1) *HPSP.* For the purposes of the HPSP, part-time student

means an individual who is a VA employee, and who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time basis but no less than half-time basis.

(2) *VIOMPSP*. For the purposes of the VIOMPSP, part-time student means an individual who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time basis but no less than half-time basis.

*Participant or scholarship program participant* means an individual whose application to the HPSP or VIOMPSP has been approved, whose acceptance agreement has been consummated by VA, and who has yet to complete the period of obligated service or otherwise satisfy the obligation or financial liabilities of such agreement.

*Required fees* means those fees which are charged by the school to all students pursuing a similar curriculum in the same school.

*Scholarship Program* means the VA Health Professional Scholarship Program (HPSP) authorized by 38 U.S.C. 7601 through 7619.

*School* means an academic institution that is accredited by a body or bodies recognized for accreditation by the U.S. Department of Education or by the Council for Higher Education Accreditation (CHEA), and that meets the following requirements:

(1) For the purposes of the HPSP, offers a course of study leading to a degree in a healthcare service discipline needed by VA.

(2) For the purposes of the VIOMPSP, offers a course of study leading to a degree in visual impairment or orientation and mobility.

*School year* means for purposes of the HPSP and its stipend payment, and the VIOMPSP, all or part of the 12-month period that starts on the date the participant begins school as a full-time student.

*Secretary* means the Secretary of Veterans Affairs or designee.

*State* means one of the several States, Territories and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

*Under Secretary for Health* means the Under Secretary for Health of the Department of Veterans Affairs or designee.

*VA* means the Department of Veterans Affairs.

*VA employee* means an individual permanently employed by VA. A VA employee does not include an individual who is employed temporarily or on a contractual basis.

*VA healthcare facility* means a VA medical center, independent outpatient

clinic, domiciliary, nursing home (community living center), residential treatment program and any of a variety of community based clinics (including community based outpatient clinics, rural health resource centers, primary care telehealth clinics, and Vet Centers), consolidated mail outpatient pharmacies, and research centers.

*VIOMPSP* means the Visual Impairment and Orientation and Mobility Professional Scholarship Program authorized by 38 U.S.C. 7501 through 7505.

(Authority: 38 U.S.C. 301, 7501(a)(1), 7504, 7602(a), 7604(1)(B), 7633)

5. Amend § 17.602 by:

- a. Revising paragraph (a)(1).
- b. Adding paragraph (a)(6).

The revision and addition read as follows:

#### § 17.602 Eligibility for the HPSP.

(a) \* \* \*

(1) Be unconditionally accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State;

\* \* \* \* \*

(6) *Clinical tours*. An applicant for a scholarship under the HPSP must agree to perform clinical tours while enrolled in the course of education or training for which the scholarship is provided. VA will determine the assignments and locations of the clinical tour.

(Authority: 38 U.S.C. 7618(b))

\* \* \* \* \*

6. Revise § 17.603 to read as follows:

#### § 17.603 Availability of HPSP scholarships.

(a) *General*. A HPSP scholarship will be awarded only when necessary to assist VA in alleviating shortages or anticipated shortages of personnel in the health professions stated in paragraph (b) of this section. VA will determine the existence of shortage of personnel in accordance with specific criteria for each healthcare profession. VA has the authority to establish the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.

(b) *Qualifying fields of education*. VA will grant HPSP scholarships in a course of study in those disciplines or programs where recruitment is necessary for the improvement of healthcare of veterans. Those disciplines or programs are listed in 38 U.S.C. 7401(1) and (3).

(Authority: 38 U.S.C. 7401(1), (3), 7612(b)(2), 7612(b)(4), and 7603(b)(1))

7. Revise § 17.604 to read as follows:

#### § 17.604 Application for the HPSP.

An applicant for the HPSP must submit an accurate and complete application including a signed written acceptance agreement.

(Authority: 38 U.S.C. 7612(c)(1)(B))

(The Office of Management and Budget has approved the information collection requirements in this section under control number XXXX-XXXX)

8. Amend § 17.605 by:

- a. Revising paragraph (a) introductory text.
- b. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively.
- c. Add new paragraph (d).
- d. The revisions read as follows:

#### § 17.605 Selection of HPSP participants.

(a) *General*. In deciding which HPSP application to approve, VA will first consider applications submitted by applicants entering their final year of education or training and applicants who previously received HPSP scholarships and who meet the conditions of paragraph (f) of this section. Except for paragraph (f) of this section, applicants will be evaluated and selected using the criteria specified in paragraph (b) of this section. If there are a larger number of equally qualified applicants than there are awards to be made, then VA will first select veterans, and then use a random method as the basis for further selection. In selecting participants to receive awards as part-time students, VA may, at VA's discretion—

\* \* \* \* \*

(d) *Notification of approval*. VA will notify the individual in writing that his or her application has been accepted and approved. An individual becomes a participant in the program upon receipt of such approval by VA.

\* \* \* \* \*

9. Amend § 17.607 by:

- a. Revising paragraph (b)(1).
  - b. Revising the authority citation at the end of paragraph (b).
  - c. Revising paragraphs (c) and (d).
- The revisions would read as follows:

#### § 17.607 Obligated service.

\* \* \* \* \*

(b) *Beginning of service*. (1)(i) *Date of employment*. Except as provided in paragraph (b)(2) of this section, a participant's obligated service will begin on the date VA appoints the participant as a full-time VA employee in a clinical occupation for which the degree prepared the participant. VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant

receives his or her degree, or the date the participant becomes licensed in a State or becomes certified, whichever is later. VA will actively assist and monitor participants to ensure State licenses or certificates are obtained in a minimal amount of time following graduation. If a participant fails to obtain his or her degree, or fails to become licensed in a State or become certified no later than 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.

(ii) *Notification.* VA will notify the participant of the work assignment and its location no later than 60 days before the date on which the participant must begin work.

(iii) *VA mentor.* VA will ensure that the participant is assigned a mentor who is employed at the same facility where the participant performs his or her obligated service at the commencement of such service.

\* \* \* \* \*

(Authority: 38 U.S.C. 7616(b), 7616(c), 7618(a))

(c) *Duration of service.* (1) *Full-time student.* A participant who attended school as a full-time student will agree to serve as a full-time clinical employee in the Veterans Health Administration for 1 calendar year for each school year or part thereof for which a scholarship was awarded, but for no less than 2 years.

(2) *Part-time student.* Obligated service to VA for a participant who attended school as a part-time student must be satisfied by full-time clinical employment. The period of obligated service will be reduced from that which a full-time student must serve under paragraph (c)(1) of this section in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student who is pursuing the same degree; however, the period of obligated service will not be for less than 1 year.

(Authority: 38 U.S.C. 7612(c)(1)(B), 7612(c)(3)(A), 7618(c))

(d) *Location for service.* VA reserves the right to make final decisions on the location for service obligation. A participant who receives a scholarship as a full-time student must be willing to relocate to another geographic location to carry out his or her service obligation according to the participant's mobility agreement. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the healthcare facility where the individual was

assigned when the scholarship was authorized, if there is a vacant position which will satisfy the individual's mobility agreement at that facility.

(Authority: 38 U.S.C. 7616(a))

\* \* \* \* \*

10. Revise § 17.611 to read as follows:

**§ 17.611 Bankruptcy.**

Any payment obligation incurred may not be discharged in bankruptcy under title 11 U.S.C. until 5 years after the date on which the payment obligation is due. This section applies to participants in the HPSP and the VIOMPSP.

(Authority: 38 U.S.C. 7505(d), 7634(c))

11. Amend § 17.612 by:

a. Redesignating paragraph (a) as new paragraph (a)(2).

b. Adding new paragraphs (a) and (a)(1).

c. Revising paragraph (b)(1).

d. Removing the authority citation at the end of paragraph (c)

e. Adding new paragraphs (e) and (f).

f. Revising the authority citation at the end of the section..

The revisions and additions read as follows:

**§ 17.612 Cancellation, waiver, or suspension of obligation.**

(a) *General.* (1) This section applies to participants in the HPSP or the VIOMPSP.

(2) Any obligation of a participant for service or payment will be cancelled upon the death of the participant.

(b) *Waivers or suspensions.* (1) A participant may seek a waiver or suspension of the obligated service or payment obligation incurred under this program by submitting a written request to VA setting forth the basis, circumstances, and causes which support the requested action. Requests for waivers or suspensions must be submitted to VA no later than 1 year after the date VA notifies the participant that he or she is in breach of his or her acceptance agreement. A participant seeking a waiver or suspension must comply with requests for additional information from VA no later than 30 days after the date of any such request.

(i) *Waivers.* A waiver is a permanent release by VA of the obligation either to repay any scholarship funds that have already been paid to or on behalf of the participant, or to fulfill any other acceptance agreement requirement. If a waiver is granted, then the waived amount of scholarship funds may be considered taxable income.

(ii) *Suspensions.* VA may approve an initial request for a suspension for a period of up to 1 year. A suspension may be extended for one additional

year, after which time the participant will be in breach of his or her acceptance agreement. If a suspension is approved:

(A) VA will temporarily discontinue providing any scholarship funds to or on behalf of the participant while the participant's scholarship is in a suspended status; or

(B) VA will temporarily delay the enforcement of acceptance agreement requirements.

\* \* \* \* \*

(e) *Eligibility to reapply for award.*

Any previous participant of any federally sponsored scholarship program who breached his or her acceptance agreement or similar agreement in such scholarship program is not eligible to apply for a HPSP or VIOMPSP. This includes participants who previously applied for, and received, a waiver under this section.

(f) *Finality of decisions.* Decisions to approve or disapprove waiver requests are final and binding determinations. Such determinations are not subject to reconsideration or appeal.

(Authority: 38 U.S.C. 7505(c), 7634(a), 7634(b))

12. Amend part 17 by adding an undesignated center heading and §§ 17.625 through 17.636 to read as follows:

**Visual Impairment and Orientation and Mobility Professional Scholarship Program**

Sec.

17.625	Purpose.
17.626	Definitions.
17.627	Eligibility for the VIOMPSP.
17.628	Availability of VIOMPSP scholarships.
17.629	Application for the VIOMPSP.
17.630	Selection of VIOMPSP participants.
17.631	Award procedures.
17.632	Obligated service.
17.633	Deferment of obligated service.
17.634	Failure to comply with terms and conditions of participation.
17.635	Bankruptcy.
17.636	Cancellation, waiver, or suspension of obligation.

**Visual Impairment and Orientation and Mobility Professional Scholarship Program**

**§ 17.625 Purpose.**

The purpose of §§ 17.625 through 17.636 is to establish the requirements for the award of scholarships under the Visual Impairment and Orientation and Mobility Professional Scholarship Program (VIOMPSP) to students pursuing a program of study leading to a degree in visual impairment or orientation and mobility. The scholarship is designed to increase the supply of qualified Blind Rehabilitation

Specialists and Blind Rehabilitation Outpatient Specialists available to VA. The scholarship will be publicized throughout educational institutions in the United States, with an emphasis on disseminating information to such institutions with high numbers of Hispanic students and to historically black colleges and universities.

(Authority: 38 U.S.C. 7501)

#### **§ 17.626 Definitions.**

For the definitions that apply to §§ 17.625 through 17.636, see § 17.601. (Authority: 38 U.S.C. 501)

#### **§ 17.627 Eligibility for the VIOMPSP.**

(a) *General.* To be eligible for the VIOMPSP, an applicant must meet the following requirements:

(1) Be unconditionally accepted for enrollment or currently enrolled in a program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree (a program in which an individual becomes certified in two of the three professional certifications offered by the Academy for Certification of Visual Rehabilitation and Education Professionals) at an accredited educational institution that is in a State;

(2) Be a citizen of the United States; and

(3) Submit an application to participate in the VIOMPSP, as described in § 17.629.

(b) *Obligated service to another entity.* Any applicant who, at the time of application, owes a service obligation to any other entity to perform service after completion of the course of study is ineligible to receive a VIOMPSP scholarship.

(Authority: 38 U.S.C. 7501(a), 7502(a), 7504(3))

#### **§ 17.628 Availability of VIOMPSP scholarships.**

VA will make awards under the VIOMPSP only when VA determines it is necessary to assist in alleviating shortages or anticipated shortages of personnel in visual impairment or orientation and mobility programs. VA's determination of the number of VIOMPSP scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and/or part-time students, is subject to the availability of appropriations.

(Authority: 38 U.S.C. 7501(a), 7503(c)(2))

#### **§ 17.629 Application for the VIOMPSP.**

(a) *Application-general.* Each individual desiring a VIOMPSP scholarship must submit an accurate and complete application, including a signed written acceptance agreement.

(b) *VA's duties.* VA will notify applicants prior to acceptance in the VIOMPSP of the following information:

(1) A fair summary of the rights and liabilities of an individual whose application is approved by VA and whose acceptance agreement is consummated by VA; and

(2) Full description of the terms and conditions that apply to participation in the VIOMPSP and service in VA.

(Authority: 38 U.S.C. 501(a), 7502(a)(2)) (Approved by the Office of Management and Budget under control number XXXX-XXXX)

#### **§ 17.630 Selection of VIOMPSP participants.**

(a) *General.* In deciding which VIOMPSP applications to approve, VA will first consider applications submitted by applicants entering their final year of education or training. Applicants will be evaluated and selected using the criteria specified in paragraph (b) of this section. If there are a larger number of equally qualified applicants than there are awards to be made, then VA will first select veterans, and then use a random method as the basis for further selection.

(b) *Selection criteria.* In evaluating and selecting participants, VA will take into consideration those factors determined necessary to assure effective participation in the VIOMPSP. These factors will include, but are not limited to, the following:

(1) Academic performance;

(2) Work/volunteer experience, including prior rehabilitation or healthcare employment and VA employment;

(3) Faculty and employer recommendations; or

(4) Career goals.

(c) *Notification of approval.* VA will notify the individual in writing that his or her application has been accepted and approved. An individual becomes a participant in the program upon receipt of such approval by VA.

(d) *Duration of VIOMPSP award.* VA will award a VIOMPSP scholarship for a period of time equal to the number of years required to complete a program of study leading to a degree in orientation and mobility, low vision therapy, or vision rehabilitation therapy, or a dual degree. The number of years covered by an individual scholarship award will be based on the number of school years that the participant has yet to complete his or her degree at the time the VIOMPSP scholarship is awarded. Subject to the availability of funds, VA will award the VIOMPSP as follows:

(1) *Full-time scholarship.* A full-time scholarship is awarded for a minimum of 1 school year to a maximum of 4 school years;

(2) *Part-time scholarships.* A part-time scholarship is awarded for a minimum of 1 school year to a maximum of 6 school years.

(Authority: 38 U.S.C. 7504(3))

#### **§ 17.631 Award procedures.**

(a) *Amount of scholarship.* (1) A VIOMPSP scholarship award will not exceed the total tuition and required fees for the program of study in which the applicant is enrolled. All such payments to scholarship participants are exempt from Federal taxation.

(2) The total amount of assistance provided under the VIOMPSP for an academic year to an individual who is a full-time student may not exceed \$15,000.00.

(3) The total amount of assistance provided under the VIOMPSP for an academic year to a participant who is a part-time student shall bear the same ratio to the amount that would be paid under paragraph (a)(2) of this section if the participant were a full-time student as the coursework carried by the participant to full-time coursework.

(4) The total amount of assistance provided to an individual may not exceed \$45,000.00.

(5) In the case of an individual enrolled in a program of study leading to a dual degree described in § 17.627(a)(1), such tuition and fees will not exceed the amounts necessary for the minimum number of credit hours to achieve such dual degree.

(6) Financial assistance may be provided to an individual under the VIOMPSP to supplement other educational assistance to the extent that the total amount of educational assistance received by the individual during an academic year does not exceed the total tuition and fees for such academic year.

(7) VA will make arrangements with the school in which the participant is enrolled to issue direct payment for the amount of tuition or fees on behalf of the participant.

(b) *Repeated course work.* Additional costs relating to the repeated course work will not be paid under this program. VA will resume any scholarship payments suspended under this section upon notification by the school that the participant has returned from the leave-of-absence or has satisfactorily completed the repeated course work and is pursuing the course of study for which the VIOMPSP was awarded.

(Authority: 38 U.S.C. 7503, 7504(3))



**§ 17.632 Obligated service.**

(a) *General provision.* Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a full-time clinical VA employee in the rehabilitation practice of the participant's discipline in an assignment or location determined by VA.

(b) *Beginning of service.* A participant's obligated service will begin on the date on which the participant obtains any required applicable credentials and when appointed as a full-time clinical VA employee in a position for which the degree prepared the participant. VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant receives his or her degree, or the date the participant obtains any required applicable credentials, whichever is later. If a participant fails to obtain his or her degree, or fails to obtain any required applicable credentials within 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.

(c) *Duration of service.* The participant will agree to serve as a full-time clinical VA employee for 3 calendar years which must be completed no later than 6 years after the participant has completed the program for which the scholarship was awarded and received a degree referenced in § 17.627(a)(1).

(d) *Location and assignment of obligated service.* VA reserves the right to make final decisions on the location and assignment of the obligated service. A participant who receives a scholarship must agree as part of the participant's mobility agreement that he or she is willing to accept the location and assignment where VA assigns the obligated service. Geographic relocation may be required.

(e) *Creditability of advanced clinical training.* No period of advanced clinical training will be credited towards satisfying the period of obligated service incurred under the VIOMPSP.

(Authority: 38 U.S.C. 7504(2)(D), 7504(3))

**§ 17.633 Deferment of obligated service.**

Deferment of obligated service under the VIOMPSP is treated in the same manner as deferment of obligated service under the HPSP under § 17.608.

(Authority: 38 U.S.C. 7504(3))

**§ 17.634 Failure to comply with terms and conditions of participation.**

(a) *Participant refuses to accept payment of the VIOMPSP.* If a participant, other than one described in

paragraph (b) of this section, refuses to accept payment or instructs the school not to accept payment of the VIOMPSP scholarship provided by VA, the participant must, in addition to any obligation incurred under the agreement, pay to the United States the amount of \$1,500 in liquidated damages. Payment of this amount must be made no later than 90 days from the date that the participant fails to accept payment of the VIOMPSP or instructs the school not to accept payment.

(b) *Participant fails to complete course of study or does not obtain certification.* A participant described in paragraphs (b)(1) through (4) of this section must, instead of otherwise fulfilling the terms of his or her acceptance agreement, pay to the United States an amount equal to all VIOMPSP funds awarded under the acceptance agreement. Payment of this amount must be made no later than 1 year after the date that the participant meets any of the criteria described in paragraphs (b)(1) through (4) of this section, unless VA determines that a longer period is necessary to avoid hardship. No interest will be charged on any part of this indebtedness. A participant will pay such amount if one of the following criteria is met:

(1) The participant fails to maintain an acceptable level of academic standing;

(2) The participant is dismissed from the school for disciplinary reasons;

(3) The participant, for any reason, voluntarily terminates the course of study or program for which the scholarship was awarded including a reduction of course load from full-time to part-time before completing the course of study or program; or

(4) The participant fails to become certified in the discipline for which the degree prepared the participant, if applicable, no later than 180 days after the date such person becomes eligible to apply for certification.

(c) *Participant fails to perform all or any part of their service obligation.* (1) Participants who breach their agreements by failing to begin or complete their service obligation, for any reason, including the loss, revocation, suspension, restriction, or limitation of required certification, and other than provided for under paragraph (b) of this section, must repay the portion of all VIOMPSP funds paid to or on behalf of the participant, adjusted for the service that they provided. To calculate the unearned portion of VIOMPSP funds, subtract the number of months of obligated service rendered from the total months of obligated service owed, divide the remaining

months by the total obligated service, then multiply by the total amount of VIOMPSP funds paid to or on behalf of the participant. The following formula may be used in determining the unearned portion:

$A = P((t-s)/t)$  in which

“A” is the amount the United States is entitled to recover;

“P” is the amounts paid under the VIOMPSP, to or on behalf of the participant;

“t” is the total number of months in the participant's period of obligated service; and

“s” is the number of months of obligated service rendered.

(2) The amount that the United States is entitled to recover will be paid no later than 1 year after the date the applicant failed to begin or complete the period of obligated service, as determined by VA.

(Authority: 38 U.S.C. 7505(a), 7505(b))

**§ 17.635 Bankruptcy.**

Bankruptcy under the VIOMPSP is treated in the same manner as bankruptcy for the HPSP under § 17.611.

(Authority: 38 U.S.C. 7505(c), 7505(d))

**§ 17.636 Cancellation, waiver, or suspension of obligation.**

Cancellation, waiver, or suspension procedures under the VIOMPSP are the same as those procedures for the HPSP under § 17.612.

(Authority: 38 U.S.C. 7505(c))

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R03-OAR-2012-0369; FRL- 9764-5]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; The 2002 Base Year Emissions Inventory for the West Virginia Portion of the Steubenville-Weirton, OH-WV Nonattainment Area for 1997 Annual Fine Particulate Matter National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the 2002 base year emissions inventory portion of the West Virginia State Implementation Plan (SIP) revision submitted by the State of West Virginia through the West Virginia Department